



**Kenya Engineering Workers Union v Shamas Motor Parts Limited (Cause E047 of 2022) [2022] KEELRC 4148 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4148 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E047 OF 2022  
J RIKA, J  
SEPTEMBER 29, 2022**

**BETWEEN  
KENYA ENGINEERING WORKERS UNION ..... CLAIMANT  
AND  
SHAMAS MOTOR PARTS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed its statement of claim on January 27, 2022.
2. It avers to have recruited 65 of the respondent's 95 unionisable employees, in the months of September and October 2021. The recruited employees represent 74% of the total.
3. The claimant states it wrote to the respondent, demanding deduction and payment of union dues, on October 7, 2021. It forwarded a copy of the recognition agreement to the respondent for execution, to enable the parties embark on collective bargaining.
4. The respondent wrote back declining to execute the recognition agreement, and also declined to collect and remit on behalf of the claimant, trade union dues.
5. The claimant presented this claim, seeking judgment against the respondent for recognition; deduction and payment of trade union dues, in favour of the claimant; and the respondent be compelled to commence collective bargaining process with the claimant. The claimant prays for costs and interest.
6. The claim is anchored on article 41 [5] of the *Constitution* and sections 48 and 54 of the *Labour Relations Act*, 2007. The claimant relies also, on Order No 1698 issued by the Minister for Labour, requiring employers of the claimant's unionisable employees, to deduct and remit trade union dues in favour of the claimant. The Order took effect on March 31, 1995.
7. The respondent filed a statement of reply, dated March 30, 2022. It is conceded that the claimant wrote to the respondent, demanding recognition and collection of trade union dues. The respondent wrote



back, pointing out that the check-off lists included names of persons who were not employed by the respondent. It was pointed out by the respondent that it has 125 employees, and recruited employees were 54, less than half of the total. The respondent informed the claimant that deduction and payment of trade union dues, would only be made upon recognition.

8. Further the respondent states that it is not engaged in engineering business. The recruited employees include house maid; cleaner; sales executive, invoicing clerk; gardener; tea lady; and rider/ messenger. Rule 3 of the claimant's constitution restricts membership to general mechanical engineering and metal allied manufacturing industry. The respondent is not engaged in these industries. The respondent prays the court to dismiss the claim.
9. Parties agreed to have the claim considered and determined on the strength of their documents, pleadings, affidavits and submissions on record. They confirmed filing and exchange of submissions at the last mention before the court, on July 28, 2022.
10. The issues are whether the claimant has satisfied the requirements of the law on recognition; and on collection and remittance of trade union dues by the respondent in favour of the claimant, under the [\*Labour Relations Act\*](#).

**The Court Finds: -**

11. Rule 3 of the claimant's constitution regulates membership. It is worded as follows: -

"Membership of the Union shall be open to all unionisable employees engaged in the general mechanical engineering and metal manufacturing industries. Provided such employee is above the apparent age of 18 years."
12. Rule 4 allows the claimant to confer honorary membership on any person, on certain conditions.
13. The respondent states that it does not fall within the areas of representation the claimant is allowed to recruit from, by its constitution. The respondent states that it is a retail shop, engaged in sale of motor vehicle parts.
14. In view of this denial, it was incumbent upon the claimant, to establish before the court, that the respondent falls within the areas of representation, circumscribed by rule 3 of the claimant's constitution.
15. There is no evidence given by the claimant to show that the respondent is engaged in general mechanical engineering. Dictionary sources such as [\*Collins Dictionary\*](#) and [\*Merriam Webster\*](#), define mechanical engineering as a branch of engineering, concerned primarily with the industrial application of mechanics and with the production of tools, machinery and their products. [\*Cambridge dictionary\*](#) defines a mechanical engineer as a person who designs or builds machines.
16. Metal manufacturing involves production of metals like iron, steel and aluminium. It includes foundries and fabrication of metals, where metals are transformed into products such as cutlery, hand tools, hardware, springs, nuts, screws, and bolts. Metal manufacturing also involves manufacture of machinery.
17. The court is not persuaded that the respondent is a business involved in any of the activities covered under rule 3 of the claimant's constitution. It is not involved in general mechanical engineering or in metal manufacturing industry. It is a retail shop, involved in sale of auto parts. It is does not engineer auto parts. It is a merchant of finished products. There is no mechanical engineer, metal fabricator or their reincarnations and associates, in the list of employees on record. The listed employees do



not work in a general mechanical engineering or metal manufacturing industry. The list, exhibited by the respondent, suggests that the respondent is a retail business, rather than a general mechanical engineering or metal manufacturing business. There is no employee designated in a position which would suggest that such employee performs any engineering, metal manufacturing or related roles. The respondent is primarily a retail shop, buying and selling auto parts.

18. The claimant has failed to establish any link between its constitution, the respondent's industry and the employees of the respondent it has recruited.
19. While the parties have freedom of association, trade unions are bound by their constitutions, and can only exercise their freedom of association, within the bounds of their constitutions.

**It Is Ordered: -**

- a. The claim is declined.
- b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH DAY OF SEPTEMBER 2022.**

**JAMES RIKA**  
**JUDGE**

